

REMARKS

Claims 58-63 were pending in the case at the time of the Office Action. No claims are canceled and no new claims are presented.

Examiner interview

The undersigned attorney thanks the Examiner for the opportunity of a short telephone conference on 11 February to discuss the restriction requirement made herein.

Claim amendments

Because of the restriction requirement, the applicant has carefully reviewed the independent claims 58 and 63. As a result of the review, applicant has made a few minor changes in each of the claims, so that claim 58 is directed to a particular assembly and claim 63 is directed to a method of using the claim 58 assembly. For that reason, the applicant respectfully asserts that restriction is not proper, as argued in more detail below.

With respect to claim 58, the occurrences of "fastener" are replaced with the term "bone screw." An occurrence in claim 59 is also amended.

With respect to claim 63, the occurrences of "frustoconical retention seat" are replaced with "tapered retention seat" to correspond the language with that used in claim 58. It is respectfully noted that claim 62 further limits the tapered retention seat to being "frustoconical." Further, the tapered retention seat of claim 63 is said to have a wall that "monotonically" decreases in diameter over its height, instead of "uniformly" as previously stated. This also puts the claim terminology in exact correspondence with claim 58.

Also with respect to claim 63, the frustoconical split ring is stated as having inside and outside diameters that each decrease "monotonically" rather than "uniformly" over its height, to correspond the terminology exactly with claim 58.

Restriction requirement

The Examiner has made a restriction requirement, on the basis that claims 58-62 (Invention I) are directed to an orthopaedic assembly and claim 63 (Invention II) is

drawn to a method of fastening the implant to a bone. The Examiner states that the basis for the requirement is MPEP 806.05(e), as the inventions are related as a process and an apparatus for its practice.

Applicant respectfully traverses. First, applicant asserts that the inventions are related as a product and a process of using, under MPEP 806.05(h). To a certain extent, this is inconsequential, as the test in either situation is "one-way distinctness".

The Examiner has stated that the inventions are distinct because the device may perform a different method. The two examples of different methods provided by the Examiner (fixing a plate onto a femoral bone and providing stabilization at vertebrae in support with a collar anchor assembly) are not "different", as both would involve fixing an orthopedic implant to a bone, as stated in claim 63.

As noted above, the applicant has taken note of the unintentional wording differences between apparatus and method claims, and has endeavored to amend the independent claims so that they correspond to the point that the restriction requirement is obviated. However, to be in compliance with the requirement, **applicant elects Invention I, that is, claims 58-62, with traverse.**

To further be in compliance, applicant has indicated claim 63 to be "withdrawn – currently amended," as claim 63 is not elected. Applicants requests rejoinder of claim 63 if the restriction requirement is withdrawn or if claim 58 is determined to be allowable.

Rejection under 35 USC §103(a)

The Examiner has not repeated the prior rejection of claims 58-63 as obvious over a combination of Talaber '291 with US Patent 5,261,910 to Warden and US Patent 5,954,722 to Bono. In fact, the Examiner has not addressed the applicant's response to the earlier rejection. Applicant respectfully assert that the claims as amended above still distinguish the combination of prior art, so the applicant does not repeat the arguments in favor of allowance.

Conclusion

The Applicant respectfully submits that the present application is now in condition for allowance and such action is earnestly requested.

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